



**U.S. Citizenship
and Immigration
Services**

Non-Precedent Decision of the
Administrative Appeals Office

In Re: 9018229

Date: DEC. 22, 2020

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner, a financial manager, seeks second preference immigrant classification as a member of the professions holding an advanced degree, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. See Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Nebraska Service Center denied the petition, concluding that the Petitioner had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

On appeal, the Petitioner submits additional documentation and a brief asserting that she is eligible for a national interest waiver.

In these proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Upon de novo review, we will dismiss the appeal.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

(2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –

(A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or

who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

(i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien’s services in the sciences, arts, professions, or business be sought by an employer in the United States.

While neither the statute nor the pertinent regulations define the term “national interest,” we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).¹ *Dhanasar* states that after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion², grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national’s proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national proposes to undertake. The endeavor’s merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact.

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: the individual’s education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals.

The third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. In performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the foreign national’s qualifications or the proposed endeavor, it would be impractical either for the foreign national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the foreign national’s contributions; and whether the national interest in the foreign national’s contributions is

¹ In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm’r 1998) (NYSDOT).

² See also *Poursina v. USCIS*, No. 17-16579, 2019 WL 4051593 (Aug. 28, 2019) (finding USCIS’ decision to grant or deny a national interest waiver to be discretionary in nature).

sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, indicate that on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.³

II. ANALYSIS

The record demonstrates that the Petitioner qualifies as a member of the professions holding an advanced degree. The remaining issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest. For the reasons discussed below, we agree with the Director that the Petitioner has not sufficiently demonstrated the national importance of her proposed endeavor under the first prong of the Dhanasar analytical framework.

Regarding her claim of eligibility under Dhanasar's first prong, the Petitioner stated that she intends to continue to work as a financial manager. She indicated that her responsibilities include maintaining financial records, overseeing audits, managing the finance team, and communicating financial status reports to key players. The Petitioner further explained that her proposed endeavor involves "raising or acquiring funds . . . in the most economical way, utilizing those funds as profitably as possible, . . . planning the future investment of those funds, and controlling the current performance plus future development by adopting budgeting, cost accounting, and financial accounting." The record contains an October 2018 job offer from [REDACTED] a private security company, offering her "the position of Finance Manager."⁴

In response to the Director's request for evidence (RFE), the Petitioner presented an August 2019 letter from [REDACTED] president of [REDACTED] stating that the Petitioner's position involves supporting "senior management in managing operations against budget plus strategic goals on a daily, monthly, annual basis, and assist[ing] in developing as well as monitoring internal policies and procedures' control. Also, you could help management in making financial decisions and analyz[ing] working capital."

The Petitioner's response to the RFE also indicated that she seeks to play "a dynamic role in a modern company's development" and "to contribute to the fortunes of the firm and to the optimal growth of the economy as a whole." She explained that her proposed endeavor is aimed at "distilling complex financial data into clear, concise, and actionable reports that support executive decision making." The Petitioner also asserted that she plans to take on "the unique responsibility of managing assets and analyzing risks to ensure the future success of the company or organization."

³ See Dhanasar, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

⁴ This letter listed the Petitioner's job duties as making accounting journal entries for financial transactions, keeping track of income and expenditures, creating financial transactions and posting information to accounting journals or software, performing general accounting duties, managing preparation and publication of company financial documents, and collaborating with management on development and execution of funding strategies. Additionally, the letter stated that her duties involve producing financial reports; developing long-term business plans; reviewing, monitoring, and managing budgets; helping management make financial decisions; and analyzing working capital to anticipate future cash flow problems. As the Petitioner is applying for a waiver of the job offer requirement, it is not necessary for her to have a job offer from a specific employer. However, we will consider information about her position to illustrate the capacity in which she intends to work in order to determine whether her proposed endeavor meets the requirements of the Dhanasar analytical framework.

In addition, the Petitioner stated: “Combining key strengths in relationship building, product/service representation, and sales leadership, I am now seeking the opportunity to utilize my experience in developing profitable relationships within a company in this country as their finance manager.” She further indicated that her proposed “services will include preparing the following: financial statements, income statements, balance sheet, [and] cash flow statement. Also, will include the financial plan, sensitivity analysis, and ratio analysis.”

In denying the petition, the Director concluded that the Petitioner had not demonstrated the national importance of her particular proposed endeavor. The Director indicated that the Petitioner’s evidence did not show that her proposed work as finance manager for a private security company stands to have broader implications in her field, significant potential to employ U.S. workers, or substantial positive economic effects at a level indicative of national importance.

In her appeal brief, the Petitioner maintains that as a finance manager, her proposed work has national importance because it is beneficial to the U.S. economy and “will continue to create an economic impact.” She asserts that her undertaking involves “opening new jobs and growth to small [and] medium companies.” In addition, the Petitioner contends that a “large firm in the U.S. ha[s] taken particular interest to offer employment for the reason that this U.S. organization were impressed on [sic] Petitioner’s innovative strategy and unique skills in terms of finance.”

In determining national importance, the relevant question is not the importance of the industry or profession in which the individual will work; instead we focus on the “the specific endeavor that the foreign national proposes to undertake.” See *Dhanasar*, 26 I&N Dec. at 889. In *Dhanasar*, we further noted that “we look for broader implications” of the proposed endeavor and that “[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field.” *Id.* We also stated that “[a]n endeavor that has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area, for instance, may well be understood to have national importance.” *Id.* at 890.

To evaluate whether the Petitioner’s proposed endeavor satisfies the national importance requirement we look to evidence documenting the “potential prospective impact” of her work. Although the Petitioner’s statements reflect her intention to provide valuable financial management services for her U.S. employer and future clients, she has not offered sufficient information and evidence to demonstrate that the prospective impact of her proposed endeavor rises to the level of national importance. In *Dhanasar* we determined that the petitioner’s teaching activities did not rise to the level of having national importance because they would not impact his field more broadly. *Id.* at 893. Here, we conclude the record does not show that the Petitioner’s proposed endeavor stands to sufficiently extend beyond her employer and future clientele to impact the financial management field or U.S. economy more broadly at a level commensurate with national importance.

Furthermore, the Petitioner has not demonstrated that the specific endeavor she proposes to undertake has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation. Without sufficient information or evidence regarding any projected U.S. economic impact or job creation attributable to her future work, the record does not show that benefits to the U.S. regional or national economy resulting from the Petitioner’s financial management projects would reach

the level of “substantial positive economic effects” contemplated by Dhanasar. Id. at 890. Accordingly, the Petitioner’s proposed work does not meet the first prong of the Dhanasar framework.

Because the documentation in the record does not establish the national importance of her proposed endeavor as required by the first prong of the Dhanasar precedent decision, the Petitioner has not demonstrated eligibility for a national interest waiver. Further analysis of her eligibility under the second and third prongs outlined in Dhanasar, therefore, would serve no meaningful purpose.

III. CONCLUSION

As the Petitioner has not met the requisite first prong of the Dhanasar analytical framework, we conclude that she has not established she is eligible for or otherwise merits a national interest waiver as a matter of discretion. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.